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In The

Supreme Court of the United States

BERNARD PARKS,

Petitioner,

v.

DAVID DIAZ,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. To establish standing under RICO, a plaintiff must show he was "injured in his business or property." (18 U.S.C. § 1964(c).) Is that standing requirement met by a plaintiff who pleads a noncompensable personal injury, such as false imprisonment, but claims that as part of that personal injury, he suffered secondary pecuniary consequences, such as his inability to pursue employment prospects while incarcerated?

2. In determining whether a RICO plaintiff has alleged an injury to a business or property interest under 18 U.S.C. § 1964(c), should federal courts rely exclusively on state law or should RICO's intent and the need for uniform application of civil RICO be overrriding considerations?

3. Must a plaintiff suffer a concrete financial loss and injury to a tangible property interest to meet RICO's "injured in his business or property" standing requirement (18 U.S.C. § 1964(c)) or is it sufficient to allege he lost an expectancy interest or opportunity for financial gain?

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OPINIONS BELOW

The unanimous decision of the United States Court of Appeals for the Ninth Circuit was initially filed January 20, 2004 and is reproduced in the attached Appendix at pages 51-56. Plaintiff/Appellant's petition for panel rehearing and rehearing en banc was filed February 3, 2004. The Ninth Circuit filed an amended opinion on August 23, 2004, with one judge now dissenting. In that opinion, the court ordered that no subsequent petitions for rehearing and petitions for rehearing en banc be filed in response to the amended opinion. App. 37-50. Rehearing en banc was granted November 18, 2004. App. 117-118. The 7-to-4 en banc per curiam decision of the United States Court of Appeals for the Ninth Circuit, filed August 16, 2005, is reported at 420 F.3d 897 (9th Cir. 2005). App. 1-36.

JURISDICTION

The order granting rehearing en banc was filed November 18, 2004. App. 117-118. The en banc opinion of the Court of Appeals was entered August 16, 2005. App. 1. This Petition for Writ of Certiorari is timely filed within 90 days of that date in accordance with Rule 13.3 of the Rules of this Court.

Jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The relevant sections of the Racketeer Influenced and Corrupt Organizations Act [RICO], 18 U.S.C. §§ 1961, 1962, and 1964, are printed in the Appendix at pages 119-125.

STATEMENT OF THE CASE

A. Diaz's conviction for attempted murder has withstood review through the California appellate courts and the United States District Court

On a summer night in 1998 on the streets of Los Angeles, David Diaz pulled out a handgun and shot numerous times at a rival gang member. The victim "was hit twice in the leg, the bullets destroying the femoral artery of his lower leg and shattering his fibula." *People v. Diaz*, 95 Cal.App.4th 695, 698. (Cal. 2002). App. 63.

Convicted by a jury, Diaz was sentenced to 37 years to life for attempted murder, aggravated mayhem, assault by means likely to produce great bodily injury, and assault with a semiautomatic weapon, with enhancements for discharging a firearm causing great bodily injury, firearm use, and infliction of great bodily injury. *People v. Diaz*, 95 Cal.App.4th at 697-698. App. 62.

Diaz's conviction was affirmed by the California Court of Appeal in January 2002. *People v. Diaz*, 95 Cal.App. 4th 695. App. 79.

Diaz's Petition for Rehearing in the California Court of Appeal and for Review in the California Supreme Court were denied. (S104896.) App. 23, n. 1. So too was his

Petition for Certiorari in the United States Supreme Court. (02-5297). App. 23, n. 1.

His Petition for Writ of Habeas Corpus filed in the U.S. District Court, Central District of California, was denied on May 27, 2005. In the order denying habeas, the District Court judge stated, "Petitioner does not contest the sufficiency of the evidence to support his conviction." App. 23, n. 1.

Diaz's appeal from denial of the habeas is pending in the U.S. Court of Appeals for the Ninth Circuit. (05-56257).

B. Nevertheless, Diaz filed a civil RICO suit claiming his false arrest and conviction caused him to suffer diminished employment opportunities and prospects

In July 2001 – three years after his arrest – Diaz filed a civil lawsuit under RICO, 18 U.S.C. § 1961 *et seq.*, in which he named some 238 defendants, including dozens of Los Angeles City officials and employees and dozens of LAPD officers. Ultimately, only former Los Angeles Police Department Chief Bernard Parks was served and he is the only defendant in this suit.

Diaz's complaint alleged that:

> "[¶] 16. On or about July 14, 1998, defendants Armando Rodriguez, Juan Parga, and Jose Ramirez fabricated evidence to the effect that plaintiff had committed assault with a deadly weapon, they tampered with witnesses and conspired to obtain the false conviction of plaintiff. Thereafter these LAPD officers fabricated further such evidence along with defendant William Eagleson to

> cause the false conviction of plaintiff, and all of them caused this kidnapping of plaintiff." Complaint 13-14.

The complaint also alleged "LAPD, its CRASH Unit, and its Rampart Division" were all "enterprises within the meaning of 18 U.S.C. 1961(4)" and that defendants had "acquired and/or maintained control over said enterprises through a pattern of racketeering activities. . . ." in violation of 18 U.S.C. § 1962(b). Complaint 15, ¶ 26. The complaint further alleged "Defendants, being associated with said enterprises, conducted and/or participated in said enterprises' affairs through a pattern of racketeering activities, in violation of 18 U.S.C. 1962(c)." Complaint 15, ¶ 27.

As for his injuries, Diaz alleged that "as a result of" his false conviction and unlawful incarceration, he was "deprived of his ability to earn a living and [he] has suffered economic harm." Complaint 14, ¶ 17. He also pleaded:

> "[¶] 31. [P]laintiff lost employment, employment opportunities, and the wages and other compensation associated with said business, employment and opportunities, in that plaintiff was rendered unable to pursue gainful employment while defending himself against unjust charges and while unjustly incarcerated.
>
> "[¶] 32. Plaintiff has suffered a material diminishment of his employment prospects by virtue of the unjust and unconstitutional convictions he has sustained." Complaint 16.

The complaint contained no allegation that Diaz was employed at the time of his arrest nor did the complaint

identify what employment "prospects" had become "diminished."

C. The motion to dismiss on the pleadings

Petitioner Bernard Parks moved for dismissal on the pleadings on the grounds that "[p]laintiff has failed to plead several necessary elements of a RICO claim" including that Diaz had not sufficiently alleged that he had become "injured in his business or property" as required by 18 U.S.C. § 1964(c). App. 3, 81.

The district court granted the motion, dismissed the case without prejudice, and permitted Diaz time to amend his complaint. App. 81. Diaz declined to amend and ultimately the case was dismissed with prejudice. App. 3.

In granting the motion, the district court focused on whether Diaz had sufficiently met the "injured in his business or property" requirement of 18 U.S.C. § 1964(c). The court noted that false arrest and imprisonment are personal injuries, citing *Owens v. Okure*, 488 U.S. 235, 251 (1989) and *Wilson v. Garcia*, 471 U.S. 261, 277 (1985). App. 86-87. Relying on *Oscar v. University Students Co-Operative Ass'n*, 965 F.2d 783 (9th Cir. 1992), *Doe v. Roe*, 958 F.2d 763 (7th Cir. 1992), and *Grogan v. Platt*, 835 F.2d 844 (11th Cir. 1988), the district court concluded "that the terms 'business and property' are words of limitation which preclude recovery for personal injuries and any consequential pecuniary losses." App. 87. "That Plaintiff suffered some secondary financial losses flowing from his personal injuries does not transform his losses into injuries to business or property." App. 87.